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| In the Matter of | ) | |
| | ) | |
| **LOS ANGELES COUNTY SANITATION DISTRICT,** | ) | |
| | ) | **OPINION AND** |
| Company | ) | **RECOMMENDED AWARD** |
| | ) | |
| vs. | ) | **C.S.M.C.S. No.** |
| | ) | **96 3 308** |
| **SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 660,** | ) | |
| | ) | |
| Union | ) | |
| | ) | |

## APPEARANCES

For the Company: Robert M. Stone
Musick, Peeler & Garrett
One Wilshire Blvd.
Los Angeles, CA 90017-3383

For the Union: James Rutkowski
Van Bourg, Weinberg, Roger & Rosenfeld
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## INTRODUCTION

This dispute concerns the way in which employees of the Los Angeles County Sanitation District (hereinafter "the Sanitation District" or "the District") were compensated for time worked at the District's Spadra Landfill prior to July of 1996. The Union claims that each employee is owed 15 minutes of overtime for each day worked prior to July of 1996. The Sanitation District claims that nothing is owed because the time in question was unpaid lunch time. The Sanitation District also claims that the grievances are untimely.

The matter was brought before an arbitrator selected from a panel submitted by the State Mediation and Conciliation Service. A hearing was held on June 24, 1997. Closing briefs were

received on September 10, 1997.

## ISSUES

The following issues were submitted for resolution:

1. Did the Sanitation District violate the Memorandum of Understanding by failing to pay 15 minutes of overtime per day to each of the grievants for their scheduled work prior to July 1996?

2. Is such a claim time barred?

3. If the Sanitation District violated the Memorandum of Understanding and the grievance is not time barred, what is the appropriate remedy?

## FACTS

The facts which gave rise to this dispute were essentially uncontested. All of the named grievants were employed by the Sanitation District at the District's Spadra Landfill. Prior to July 1, 1996, each employee was required to be at the work site for eight hours and forty-five minutes a day. In the middle of each day, each employee had one uninterrupted hour of free time, i.e., time in which no duties were required. During this time, the employees were allowed to eat lunch and leave the work site. Based on this schedule, each employee was paid for 8 hours of work.

Some time in late May or early June of 1996, Antonio Guerrero, one of the grievants, contacted shop steward Marilyn Minnifield (who is another one of the grievants) about the District's plan to extend the work day. Guerrero had been informed of this plan by Roy Smith, his supervisor. Upon hearing the complaint, Minnifield reviewed the Memorandum of Understanding (hereinafter "M.O.U.") and concluded that the employees at the landfill were being under compensated.

District employees are normally given two 15 minute "breaks" each day. Under the M.O.U., employees are to be paid for all time on the job which was not "lunch" time. Thus Minnifield concluded that each employee should have gotten paid for half of the one hour block of free time.

Minnifield brought this to the attention of the District. In response, at the end of June, the District adjusted the work schedule so that the employees' total time on site was reduced from 8 hours and 45 minutes to 8 hours and 30 minutes.

In July of 1996, notwithstanding this change in schedule, Minnifield, Guerrero and three other employees filed grievances claiming that they had been under compensated prior to the change. Each employee claimed that he or she had been denied 15 minutes of overtime pay for each day worked, in violation of the M.O.U. and in violation of the Fair Labor Standards Act. (Joint Exh. 2.) The individual grievants sought back pay for time periods ranging from one year and ten months to seven years and six months.

In September of 1996, the District issued its written response to the grievance. The critical portion of that response stated:

> You are scheduled to work an 8 hour and 45 minute shift that includes a 30 minute lunch period. Although the MOU does not indicate the duration of rest periods, the MOU does provide that rest periods are to be taken "in conjunction" with the lunch period. Pursuant to this provision, the management at Spadra Landfill has established a practice of relieving you from your duties for a period of 60 minutes, which consists of the 30 minute lunch period and 30 minutes break time.
>
> Bona fide meal periods are not counted as work time. (Joint Exh. 3.)

## DISCUSSION

### Were the Employees Under Compensated?

As indicated, the Union claims that prior to the schedule change, each employee was

under compensated by 15 minutes per day. The Union claims that each employee was entitled to 30 minutes of paid "break" time. Thus each employee should have gotten paid for half of the one hour of free time. The Union would analyze the work day as follows:

**Time on Job:** 8 hours and 45 minutes

**Actual Work Time:** 7 hours and 45 minutes

**Paid Break Time:** 30 minutes

**Required Payment:** 8 hours and 15 minutes

To the extent that this extra time led to work in excess of 40 hours per week, the employees were entitled to overtime at the rate of "one and one-half times their regular hourly rate". (M.O.U., Art. IV, sec. 1.)

The Sanitation District claims that if anything, employees were overcompensated prior to the schedule change:

> Although the MOU expressly excludes lunch periods from the calculation of hours worked, the Districts nevertheless paid such employees as if they had worked eight hours.... (District's Post-Hearing Brief.)

I believe the resolution of this dispute is found in the language of the M.O.U.. Article VII, sec. 7 states that employees in classifications to which grievants belong: "shall only take coffee breaks or rest periods *in conjunction with* their lunch period". (Emphasis added.) I don't believe that the italicized language suggests the elimination of a break. Instead, it suggests the movement of the break. To the extent that break time is to be compensated, it doesn't matter that it has been moved so as to abut the lunch period. Had the parties wanted to *eliminate* the break, there are a myriad ways in which that could have been clearly expressed. Absent a clear intent to eliminate a benefit and clear language expressing that intent, it would be inappropriate

find that such a benefit had been eliminated.

This conclusion is also supported by the bargaining history. According to Valerie Hall, the District's Personnel Manager, the current provision was negotiated in 1988. At that time, the District proposed that coffee breaks be eliminated for employees in the grievants' situation. (See, Union Exh. 3.) The Union objected and the parties negotiated the current provision, which Hall characterized as a "compromise". The interpretation suggested by the Union is consistent with such a compromise. The Union maintained a benefit: payment for break time. The District received a benefit: the elimination of separate breaks which, according to Hall, were disruptive to the District's operations.

**Are the Grievances Timely?**

Even assuming the grievants were under compensated, the District claims that the grievance was untimely. Under Article XXII, sec. 6 of the M.O.U., a grievance must be brought:

> Within twelve (12) business days rom the occurrence of the matter on which a complaint is based, or within twelve (12) business days from his knowledge or such occurrence, or within twelve (12) business days of discussing the complaint with the immediate supervisor....

The District claims that the "occurrence" here was the first day that an employee wasn't paid overtime. The District argues that each employee was aware of what he or she was paid and what he or she was paid for. As a result, the District claims that all of the grievances are untimely.

In response, the Union contends that the grievances are timely because they were filed within twelve days of the discussing the matter with the supervisor. The Union also argues that they are timely because the grievants acted promptly after being notified of the District's plan to extend the work day.

I believe that each position is both extreme and flawed. One cannot charge each employee with awareness of the significance of each word in the M.O.U. The language here is so ambiguous that the parties needed to resort to arbitration for interpretation. In this circumstance it would be unfair to expect the average employee to have a complete understanding of the language and its significance. Taken to its extreme, the District's position would preclude prospective relief for any initial, systemic misinterpretation of the M.O.U. which was not grieved within 12 days of the effective date of the agreement. Conversely, the Union's position would allow an employee to "sleep on his rights" and generate an enormous back pay award.

The parties have argued that the matter is governed by the Fair Labor Standards Act. While I don't believe that resort to that act is needed to determine whether the time in question is break time or lunch, I think the Act suggests an equitable resolution to the timeliness problem. I believe some limited retroactive relief is warranted. The parties have indicated that the applicable limit for back pay awards under the Fair Labor Standards Act is two years. I believe such a standard should be incorporated as a limit on retroactive relief in the instant case since it too involves a claim of overtime similar to one covered by the Act.

**RECOMMENDED AWARD**

For the reasons expressed, I recommend that each greivant be paid at the rate of time and a half for all overtime resulting from working an extra fifteen minutes per day. I recommend that such overtime be limited to that which was earned during the two year period immediately prior to the filing of each employee's written grievance.

Dated: October 5, 1997

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Jan Stiglitz